

HOUSE No. 1276

By Ms. Peisch of Wellesley, petition of Alice Hanlon Peisch and Jarrett T. Barrios relative to enabling cities and towns to preserve assisted affordable housing. Housing.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT ENABLING CITIES AND TOWNS TO PRESERVE ASSISTED AFFORDABLE HOUSING.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is to authorize municipalities to prevent
3 the loss of publicly assisted housing by providing them with the
4 opportunity to preserve such housing, therefore it is hereby
5 declared to be an emergency law, necessary for the immediate
6 preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws, as appearing in the 2004 Official Edition,
2 are hereby amended by inserting after chapter 40S the following
3 chapter:—

4 **CHAPTER 40T.**
5 **PRESERVATION OF PUBLICLY ASSISTED HOUSING.**

6 Section 1. As used in this chapter, the following words shall
7 have the following meanings:—

8 “Affected municipality”, any city or town in which publicly
9 assisted housing or a publicly assisted housing development is
10 located.

11 “Affordability restrictions”, limits on rents that owners may
12 charge for occupancy of a rental unit in publicly assisted housing
13 and limits on tenant income for persons or families seeking to
14 qualify as tenants in publicly assisted housing.

15 “Government program”, a program or combination of programs
16 described in the definition of publicly assisted housing.

17 “Owner”, a person, firm, partnership, corporation, trust, organization or other entity that holds title to a publicly assisted housing development.

20 “Prepayment”, the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on a publicly assisted housing development that would have the effect of removing the affordability restrictions applicable to the assisted housing development under the programs described thereunder.

27 “Publicly assisted housing” or “publicly assisted housing development”, housing that receives government assistance under any of the following programs:-

30 (1) Section 8 of the United States Housing Act of 1937, as amended, 42 U.S.C. Section 1437f; as it applies to new construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs, or any other program providing project-based rental assistance;

35 (2) Section 42 of the Internal Revenue Code, as amended, 26 U.S.C. Section 42, the federal Low-Income Housing Tax Credit Program;

38 (3) Section 101 of the Housing and Urban Development Act of 1965, as amended, 12 U.S.C. Section 1701s as it applies to programs for rent supplement assistance thereunder;

41 (4) Section 202 of the Housing Act of 1959, as amended, 12 U.S.C. Section 1701q;

43 (5) Section 221(d)(3) of the National Housing Act of 1934, as amended, 12 U.S.C. Section 17151(d)(3) or (5), the below market interest rate program;

46 (6) Section 221(d)(4) of the National Housing Act, as amended, 12 U.S.C. Section 17151 (d)(4), to the extent the project’s rents are regulated pursuant to a government agreement;

49 (7) Section 236 of the National Housing Act, as amended, 12 U.S.C. Section 1715z-1;

51 (8) Section 515 of the Housing Act of 1949, as amended, 42 U.S.C. Section 1485;

53 (9) Section 521 of the Housing Act of 1949, as amended, 42
54 U.S.C. Section 1490a;

55 (10) The federal Urban Development Action Grant, “UDAG”,
56 as amended, 42 U.S.C. Section 5318, to the extent project’s rents
57 are regulated pursuant to a government agreement;

58 (11) The federal Housing Development Action Grant,
59 “HODAG”, as amended, 42 U.S.C. Section 1437o, to the extent
60 project’s rents are regulated pursuant to a government agreement;

61 (12) Chapter 121A of the general laws, to the extent project’s
62 affordability of dwelling units is regulated; or

63 (13) Section 13A of Chapter 708 of the Acts of 1966.

64 “Tenant”, a tenant, subtenant, lessee, sub-lessee or other person
65 entitled to possession, occupancy or benefits of a rental unit
66 within the assisted housing.

67 “Termination”, any one or more of the following conditions
68 that would have the effect of removing any affordability restric-
69 tions:—

70 (1) non renewal of a government program contract;

71 (2) termination of a government program contract;

72 (3) non renewal of a government program mortgage contract;

73 (4) termination of a government program mortgage contract;

74 (5) termination of an affordability restriction under a govern-
75 ment program;

76 (6) payment in full of a government program mortgage;

77 (7) expiration of an affordability restriction under a government
78 program;

79 (8) any action that may result in the full or partial termination
80 of a government program’s regulatory or financial assistance
81 agreement; or

82 (9) any action that may result in the full or partial termination
83 of a government program’s affordability restrictions.

84 Section 2. (a) An owner of publicly assisted housing may not
85 complete prepayment, or complete a termination unless, not less
86 than 12 months before the prepayment or termination, the owner
87 submits to all tenants of the publicly assisted housing to the mayor
88 or board of selectmen of any affected municipality, to the Com-
89 munity Economic Development Assistance Corporation, and to
90 the department of housing and community development, a notice
91 of intent to complete prepayment, or complete termination. Every

92 such required notice shall:— (1) include the address of any pub-
93 licly assisted housing, characteristics of the property including the
94 number of units, and the names and addresses of the owners; (2)
95 include the date on which the owner intends to complete prepay-
96 ment, or complete termination; (3) include a detailed list of any
97 and all affordability restrictions applicable to the property; and (4)
98 include a statement that the affected municipality has the right to
99 purchase the property.

100 (b) Notwithstanding any provision of law to the contrary,
101 within 60 days after the date of the owner's notice pursuant to
102 subsection (a), the affected municipality may notify the owner that
103 it has chosen a designee to act for and on behalf of the affected
104 municipality or that the affected municipality will act without a
105 designee. The affected municipality, in selecting a designee, shall
106 enter into an agreement with a nonprofit corporation, local or
107 regional housing authority, or private purchaser in which the non-
108 profit corporation, local or regional housing authority, or private
109 purchaser agrees to maintain the development in a manner that
110 preserves the housing development's existing affordability restric-
111 tions. The agreement shall set forth the minimum length of time
112 that the affordability restrictions shall be in effect, which shall be
113 no less than 99 years. The affected municipality shall have the
114 right to bring an action for specific performance or other injunc-
115 tive relief for enforcement of the agreement, and the agreement
116 must contain provisions to this effect along with such other reme-
117 dies for breach as the affected municipality and the nonprofit cor-
118 poration, local or regional housing authority, or private purchaser
119 may agree. Once such an agreement is entered into, the nonprofit
120 corporation, local or regional housing authority or private pur-
121 chaser shall assume all rights and responsibilities attributed to the
122 affected municipality under this chapter. An affected municipality
123 purchasing publicly assisted housing or a publicly assisted
124 housing development without choosing a designee under this
125 chapter shall maintain the development in a manner that preserves
126 the publicly assisted housing or housing development's existing
127 affordability restrictions for not less than 99 years from the date of
128 purchase of such development.

129 (c) Within 60 days after the affected municipality has notified
130 the owner of its election to proceed with or without a designee,

131 the owner shall, before completing prepayment or completing ter-
132 mination, provide to the affected municipality or its selected
133 designee, a bona fide offer for sale of the property which shall
134 contain the essential terms of the sale, including at a minimum,
135 the following:—

136 (1) the sales price; (2) the terms of seller financing, if any,
137 including the amount, the interest rate, and amortization rate
138 thereof; (3) the terms of assumable financing, if any, including the
139 amount, the interest rate, and the amortization rate thereof; (4)
140 proposed improvements, if any, to the property to be made by the
141 owner in connection with the sale; and (5) physical access to the
142 property so that representatives of the affected municipality or its
143 selected designee may conduct an inspection of the premises.

144 (d) The affected municipality or its designee, shall notify the
145 owner in writing, within 60 days after the receipt of the bona fide
146 offer of sale, of its intent to purchase the assisted housing.

147 (e) The owner shall, after receiving a notice pursuant to subsec-
148 tion (d), comply with any reasonable request to make documents
149 available to the affected municipality or its designee, during
150 normal business hours at the owner's principal place of business
151 within 15 days of receiving such a request, including but not lim-
152 ited to:— (1) a floor plan of the development; (2) itemized lists of
153 monthly operating expenses, capital expenditures in each of the 2
154 preceding calendar years and deferred maintenance costs; (3) the
155 amount of project reserves; (4) utility consumption rates; (5)
156 copies of financial and physical inspection reports filed with fed-
157 eral, state or local agencies; (6) the most recent rent roll; (7) a list
158 of tenants; (8) a list of vacant units; and (9) a statement of the
159 vacancy rate at the development for each of the 2 preceding cal-
160 endar years.

161 (f) The municipality or its designee shall, within 90 days after it
162 notifies the owner of its intent to purchase, provide the owner
163 with a bona fide offer to purchase evidenced by a purchase and
164 sale contract reflecting a sales price and terms agreed to by the
165 parties or the sales price and terms determined pursuant to subsec-
166 tion (g) of this section and an earnest money deposit equal to 3
167 percent of the sales price in the bona fide offer to purchase, or
168 500,000 dollars, whichever is less. Such an earnest money deposit
169 shall be held by an escrow agent, who is mutually acceptable to

170 the owner and the municipality or its designee. This earnest
171 money deposit shall be non-refundable upon execution of the pur-
172 chase and sale contract by both parties, except for non-perfor-
173 mance by the seller of the terms of the contract.

174 (g) If the parties are unable to agree to a sales price within the
175 first 60 days of the 90 day period specified in subsection (f), the
176 sale price of the assisted housing shall be based upon its fair
177 market value, based on its highest and best use, without afford-
178 ability restrictions, as determined by 2 independent appraisers
179 qualified to perform multifamily housing appraisals. One
180 appraiser shall be selected and paid by the owner and the other
181 shall be selected and paid by the municipality or its designee. If
182 the appraisers fail to agree upon a fair market value, the owner
183 and the municipality or its designee shall either jointly select and
184 pay a third appraiser whose appraisal shall be binding, or agree to
185 take an average of the 2 appraisals. All appraisers shall be certi-
186 fied Members of Appraisal Institute. The determination of the
187 sales price pursuant to this subsection shall be completed within
188 the 90 day period specified in subsection (f) of this section.

189 (h) The affected municipality or its designee shall agree to
190 close on the sale within 90 days from the date the parties sign the
191 purchase and sale agreement.

192 (i) If the affected municipality or its designee fails to provide
193 notice to the owner pursuant to subsections (b), (c), or (d) or fails
194 to meet the requirements of subsections (f), (g) or (h), the owner
195 is released from any and all requirements and obligations under
196 this section.

197 (j) Any notice provided for in this chapter shall be deemed
198 given when a written notice is delivered in person or mailed by
199 certified or registered mail, return receipt requested, to the party
200 to whom notice is given.

201 (k) The Community Economic Development Assistance Corpo-
202 ration shall provide assistance to affected municipalities or its
203 designee concerning the content, format, delivery and publication
204 of notices referred to in this section.

205 (l) For the purposes of this chapter, the affected municipality or
206 its designee, shall not be subject to the provisions of section 16 of
207 chapter 30B.

208 Section 3. The provisions of this chapter shall not apply to any
209 of the following:—a government taking by eminent domain or
210 negotiated purchase; a forced sale pursuant to a foreclosure; the
211 exercise of any remedies under any financing imposing afford-
212 ability restrictions on the development; or a deed-in-lieu-of fore-
213 closure or an agreed upon renegotiation, restructuring or
214 repayment of past due debt between a lender and an owner; a
215 transfer by gift, devise or operation of law; any housing develop-
216 ment with respect to which the owner has received, and continues
217 to receive, a written commitment from the federal Department of
218 Housing and Urban Development, the Massachusetts Department
219 of Housing and Community Development, the Massachusetts
220 Housing Partnership Fund, the Massachusetts Housing Finance
221 Agency, the Massachusetts Development Finance Agency, or
222 other similar government or quasi-public agency in connection
223 with a proposed sale, transfer, other disposition, or refinancing of
224 such development, for any one or more of the following:— (1)
225 mortgage financing; (2) an allocation of low-income housing tax
226 credits; (3) an extension or renewal of a government program con-
227 tract providing affordability for the development; or (4) funding
228 directed to preserving affordability, resulting in no less than 50
229 percent of the development's current affordable units; or any other
230 disposition of publicly assisted housing in a manner pursuant to
231 which the property after such disposition continues to be publicly
232 assisted housing as defined in this section. Provided, if any devel-
233 opment shall be subject to financing by any of the public agencies
234 specifically named above, the provisions of subsection (b) of
235 section 2 shall not take effect unless and until any public agency
236 expressly named above shall fail to provide a commitment as set
237 forth in this section, in (1) to (4) inclusive, within 180 days of the
238 proposed prepayment or termination.

239 Section 4. If any tenant in good standing under the terms of his
240 lease in any affordable unit, with affordability restrictions, invol-
241 untarily vacates such unit or is forced to pay market rate, so long
242 as the tenant remains income eligible for subsidized housing the
243 owner shall:- (a) locate, and pay the cost of relocating to, a com-
244 parable affordable unit or (b) pay the tenant the difference
245 between the market rent and affordable rent for which the tenant
246 qualifies for a period of 5 years.

247 Section 5. The attorney general of the commonwealth, the
248 affected municipality or its designee, or one or more tenants in the
249 publicly assisted housing, may bring a civil action against an
250 owner who has violated this chapter. An owner found to have vio-
251 lated any provision of this chapter shall, in addition to any other
252 damages, pay a civil penalty to each tenant in the publicly assisted
253 housing in the amount of \$500 per tenant, and shall also pay the
254 attorney's fees and costs incurred in bringing the action.